

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD L. WHITE)	
Claimant)	
VS.)	
)	Docket No. 208,714
J & L SERVICES)	
Respondent)	
AND)	
)	
FIREMAN'S FUND)	
Insurance Carrier)	

ORDER

Claimant appeals from a September 24, 1996, preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

The Administrative Law Judge denied claimant's request for preliminary benefits, finding the condition complained of by claimant not to have arisen out of and in the course of his employment with respondent. Accordingly, the issue for Appeals Board review is whether claimant sustained his burden of proof that he suffered accidental injury arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds that the Order of the Administrative Law Judge should be affirmed.

Claimant alleged he suffered personal injury by accident on November 7 or 8, 1995, when he slipped and fell at work. The employer testified and produced the employment records which showed claimant did not work on either of those dates.

Claimant first sought medical treatment for his alleged injury on November 25, 1995. He was seen by Dr. Earl George at the emergency room at HCA Wesley Medical Center. The medical records in evidence not only fail to contain any reference to claimant's alleged work-related accident, but instead, the records contain a specific history of a nonwork-related accident. The November 25, 1995, emergency room report states that claimant injured his back at home the day before while carrying 90 pounds of weight lifting equipment upstairs.

The Appeals Board finds that claimant has failed to sustain his burden of proof that he suffered accidental injury arising out of and in the course of his employment with respondent on the dates alleged. Accordingly, the preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated September 24, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Scott J. Mann, Hutchinson, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director